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**Commission on
Judicial Performance**

THE STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING JUDGE
BRUCE CLAYTON MILLS**

No. 192.

**ANSWER BY JUDGE BRUCE
CLAYTON MILLS TO NOTICE
OF FORMAL PROCEEDINGS**

Following the issuance of a Notice of Intended Public Admonishment, on August 9, 2012, Judge Bruce Clayton Mills demanded formal proceedings pursuant to Rule 118 of the Rules of the Commission on Judicial Performance.

The allegations relating to the subject of the NOTICE OF FORMAL CHARGES are incomplete and in most instances wrong.

The allegations in the Notice of Formal Proceedings beginning on page 2 with the words "On October 4, 2011" continuing through page 3, ending with the words "your son's case" are disputed and therefore denied.

Commissioner Joel Golub has been a subordinate judicial officer in the Walnut Creek Courthouse of the Contra Costa County Superior Court since 1993. In 1994, Judge Mills and Commissioner Golub both applied for the seat on the Walnut Creek — Danville Municipal Court bench which was awarded to Judge

Mills in 1995. For reasons unrelated to the appointment, upon assuming office, Judge Mills recommended to the presiding judge of the Walnut Creek — Danville Municipal Court, Merle Eaton, that Commissioner Golub be replaced. In 2002, Judge Mills' then spouse, Cheryl Mills, ran for and won an open seat on the Contra Costa County Superior Court bench. One of her challengers for the seat was Commissioner Golub. During the campaign, Commissioner Golub sued Judge Cheryl Mills claiming that certain campaign mailers were improper and/or illegal. Judge Cheryl Mills was forced to hire counsel and incur significant legal fees. After the hearing, the case was dismissed as "meritless". During the campaign, a third party took photographs of Commissioner Golub's "significant other," Heather Whittington, tearing down "Cheryl Mills for Judge" signs. A lawsuit was filed by Cheryl Mills against Ms. Whittington and a judgment was recovered. Due to their strained relationship, Judge Bruce Mills requested from his presiding judge that he have no supervisory relations with Commissioner Golub and, for the past ten years, Judge Mills has neither supervised nor communicated with Commissioner Golub. Since Commissioner Golub is the only subordinate judicial officer in the Walnut Creek Courthouse, Judge Mills does not exercise any supervisory authority over any subordinate judicial officer.

On October 2, 2010, Judge Mills' son, Alex, was cited by Officer Mary Grubb of the Moraga, California police department for misdemeanor possession of cigarettes pursuant to California Penal Code Section 308b. Alex Mills was not cited for an infraction, but rather for a misdemeanor. The citation was a "direct file" by the police agency and "direct file" infractions are heard exclusively by

commissioners in Contra Costa County, and because it was set in Walnut Creek the matter was assigned to Commissioner Golub. However, the Alex Mills matter was direct filed as a misdemeanor, not an infraction, and it was questionable whether the matter should have been assigned to Commissioner Golub in the first place.

In either an infraction or misdemeanor involving a minor the court requires that a parent be present at the first appearance. Judge Bruce Mills attended the first appearance with Alex and assumed that Commissioner Golub would recuse himself pursuant to California Code of Civil Procedure section 170.1 by reason of his strained relationship with Judges Bruce Mills and Cheryl Mills as set forth above. This is especially true given the fact that Alex Mills was charged with a misdemeanor offense. The expectation of both Judges Mills was that Commissioner Golub would issue a recusal order and a new date would be assigned for Alex's initial appearance.

Without recusing himself, Commissioner Golub advised Alex Mills that the matter was to be handled as an infraction, not a misdemeanor. This was something not requested by Judge Mills and was certainly not an accommodation to the Mills family given the previous and existing relationship between the Judges Mills and Commissioner Golub. In fact, all California Penal Code Section 308b cases handled by Commissioner Golub are resolved as infractions and as he stated "Everything is an infraction in this court."

Alex Mills pled to the infraction and was ordered to perform community service. The conversion of the case from a misdemeanor to an infraction is of

great importance. Once the case was converted to an infraction there was no other party involved, that is, neither a police agency, the probation department, nor the district attorney had any involvement in the case whatsoever. The case then only involved the party and the court, therefore any communications by or on behalf of the party with the court could not be "ex parte" since there was no other side to be excluded from discussions.

On March 10, 2011, eight days after Alex Mills pleaded to the infraction and was given 20 hours of community service, Alex was enrolled in a 10-month treatment program; a 7-month residential treatment program preceded by a 3-month therapeutic wilderness camp. After successfully completing the initial program, The Pacific Quest Wilderness Program, Alex entered residential treatment at the Island View Residential Treatment Center in Utah. Alex remained in the treatment program up until January 9, 2012.

In September 2011, an Order to Show Cause issued from the Contra Costa County Superior Court for Alex Mills to give evidence of the completion of the community service work ordered by Commissioner Golub on March 12, 2011. Judge Bruce Mills discussed the OSC letter from the court with his former spouse, Judge Cheryl Mills, and it was decided that they would hire a lawyer to make the October 4, 2011 appearance, detailing Alex's participation in residential treatment, and request credit against the community service for the time served in residential treatment. The lawyer engaged to perform this service was attorney Elle Falahat. Neither Judge Bruce Mills nor Judge Cheryl Mills had any intention of appearing at court on October 4, 2011 relative to the Alex Mills matter.

It bears repeating so that there is no confusion, relative to the October 4, 2011 hearing, there was one party involved, Alex Mills, not a police agency, not the probation department, and not the district attorney's office. Ex parte communication was not possible as no other party had any involvement whatsoever in the case.

At approximately 10:30 a.m. on October 4, 2011, Judge Mills returned a telephone call that he received from attorney Elle Falahat. It was reported to Judge Mills by Ms. Falahat that she was engaged in a matter in the Alameda County Superior Court and would be unable to attend the scheduled 1:30 court calendar. From his chambers on the second floor of the courthouse Judge Mills then went to Commissioner Golub's clerk, Jane Sims, who is officed on the first floor of the courthouse to advise her that Alex and Alex's attorney would be unable to attend court for the 1:30 p.m. calendar. Ms. Sims said that Commissioner Golub was not in court that day.

The allegation that Judge Mills asked Jane Sims "that the matter be called early so the attorney would not have to wait" is patently inaccurate and makes no sense whatsoever. Judge Mills initially contacted Jane Sims for the sole reason of advising her that Alex was in a program in Utah, that the attorney could not appear at the 1:30 p.m. calendar, and that no one would be appearing. The calling of the case was a non-issue as there was no one to appear. The idea that Judge Bruce Mills would request from Commissioner Golub any accommodation is absurd in light of the nature of their interactions.

During the course of the conversation wherein Judge Mills mentioned to Ms. Sims that Ms. Falahat could not appear, Ms. Sims advised Judge Mills that Helen Peters was sitting as the commissioner pro tem for the 1:30 calendar. Judge Mills knows Helen Peters professionally but never "supervised" her when she sat pro tem as a subordinate judicial officer. When Ms. Sims told Judge Mills of Helen Peters' involvement, he stated words to the effect, "Okay, tell Commissioner Peters that Alex is out of state and his attorney is tied up in Alameda County Superior Court and can't make the hearing." Jane Sims then asked what the issue involved and Judge Mills explained the matter to her. Judge Mills recalls giving Ms. Sims documentation regarding Alex's enrollment in the wilderness and residential treatment programs, but cannot remember whether he presented the documentation to Ms. Sims during this conversation or in a second conversation just before he left for lunch on October 4, 2011.

Following his 10:30 a.m. discussion with Ms. Sims, Judge Mills returned to his department located on the second floor of the Walnut Creek Courthouse. The commissioner's chamber is adjacent to Jane Sims's office and looks out onto a parking lot where the Walnut Creek judges park. When Judge Mills leaves his chamber on the second floor of the courthouse for lunch, he walks down a hallway on the first floor of the building to a doorway leading to the judges' parking lot. The doorway is immediately adjacent to Jane Sims's office. On his way to lunch on October 4, 2011, Judge Mills did stop at Jane Sims's office and had a second conversation with her. Judge Mills was told by Ms. Sims to come back to the commissioners' office "just before 1:30."

The only reason that Judge Mills was going to Pro Tem Commissioner Peter's chambers following lunch was because he was instructed to do so by the Commissioner's clerk. It bears repeating: at no time did Judge Mills request to see Commissioner Peters. Upon returning to the Walnut Creek courthouse at approximately 1:30 p.m., Judge Mills parked his car in the judges' parking lot which is visible from Commissioner Golub's chambers. Upon entering the courthouse building, he saw Ms. Sims and Commissioner Pro Tem Peters standing in the hallway. Judge Mills greeted them and was asked, essentially, what was going on with Alex's matter. Judge Mills again explained the situation regarding the attorney and explained what Alex had been doing for the past seven months. It is Judge Mills' belief that Commissioner Peters was in possession of the documentation verifying Alex's enrollment in the programs. It was explained that Alex's lawyer, Elle Falahat, intended to request "credit for time served" against the community service order for participation in residential treatment. Commissioner Peters admits that outside of her courtroom she "voir dired" Judge Mills relative to Alex's case.

Judge Mills did not consider his conversation with Jane Sims and Commissioner Pro Tem Peters to be "ex parte" because there was no other side to the case and, without another side, by definition his communication could not be ex parte. California Code of Judicial Ethics, Canon 3B(7); California Rules of Professional Conduct Rule 1-710. Furthermore, the matter involving Alex Mills' OSC is the type of matter which a judge may "hear and determine" in chambers pursuant to Code of Civil Procedure § 166.

Judge Mills vividly recalls that his discussion with Ms. Sims and Commissioner Pro Tem Peters was in the courthouse hallway and not in the commissioner's chambers. Admittedly, Judge Mills' recollection is at odds with that of Helen Peters who believes the conversation took place in chambers although Ms. Peters never asked that Judge Mills be brought to chambers. Regardless, Commissioner Peters, in her own words, "voir dired" Judge Mills about the programs without requesting further documentation. Judge Mills described them, noting that Alex had finished the wilderness camp and was in the midst of the residential treatment program. Judge Mills offered the same documentation to Commissioner Peters to review that would have been used by Ms. Falahat. Commissioner Peters did issue an order giving Alex credit for time served and this order issued without a hearing in open court, but again she was authorized to do so by C.C.P. § 166. Parenthetically, Commissioner Peters did not report this matter to Court Administration until after Commissioner Golub advised Jane Sims to report the incident to Supervising Judge Kolin two days after the Alex Mills OSC was resolved and after being contacted by Court Administration.

The Alex Mills matter did not, and could not, have involved ex parte communications because there was no other party to the proceeding. While the discussions took place outside the Commissioner's courtroom, Judge Mills did not select the location nor request that it not be conducted in the Commissioner's courtroom. Judge Mills did not seek any favors in his son's matter by reason of

his judicial position. Judge Mills did not request a meeting with Commissioner Peters. That was suggested and arranged by Ms. Sims.

If, as alleged, Commissioner Peters had the authority pursuant to Code of Civil Procedure Section 166 to "hear and determine" Alex Mills' matter in chambers, then no Canon of Judicial Ethics could have been violated by anyone.

It is respectfully submitted that in the interest of justice this matter be dismissed.

DATED: November 20, 2012 MURPHY, PEARSON, BRADLEY & FEENEY

By 

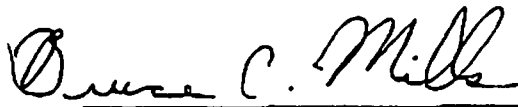
James A. Murphy
Attorneys for Judge Bruce Clayton Mills

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VERIFICATION

I, BRUCE C. MILLS, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: November 20, 2012



BRUCE C. MILLS

CERTIFICATE OF SERVICE

I, Sandra Chao, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 20, 2012, I served the following document on the parties in the within action:

**ANSWER BY JUDGE BRUCE CLAYTON MILLS TO NOTICE OF
FORMAL PROCEEDINGS**

X	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
X	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:

Gary W. Schons, Esq.
Criminal Law Division, Appeals, Writs & Trials
110 West A. Street, Suite 1100
San Diego, CA 92101

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

Office of the Legal Advisor
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on November 20, 2012.



Sandra Chao